IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Sohan Lal v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.5652/1993
under Article 226 of the Constitution of India.

Date of Order : 6nd May, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

BY THE COURT :

By this petition for writ a challenge is given to the judgment dated 17.9.1993 passed by learned District Judge, Bikaner in Appeal No.46/90 (Sohan Lal vs. State of Raj.) whereby the learned District Judge while exercising the powers under Section 9 of the Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 (hereinafter to be referred to as “the Act of 1964”) affirmed the order passed by the Estate Officer under Sections 5 and 7 of the Act of 1964.

The contention of the counsel for the petitioner is that the order dated 17.9.1993 is

perverse as the appellate court failed to appreciate the contention of the petitioner that no notice, as required under sub-section(1) of Section 5 of the Act of 1964, was served upon him to provide a reasonable opportunity of being heard. According to the counsel for the petitioner the Estate Officer treated the service sufficient though the returned notice does not bear any proof for effecting service on the petitioner.

A report is made at the back of notice in following terms:-

On basis of note made above, the Estate Officer treated the service sufficient upon the petitioner. According to the counsel for the petitioner there was no proof available with the Estate Officer with regard to truthness of the note made at the back of returned notice.

Learned counsel for the respondents asserted that the note made at the back of notice clearly shows that the petitioner was avoiding service and, therefore, the court below rightly treated the service sufficient upon him. He has also stressed that there is no reason to disbelieve the note made by the process server.

Heard the learned counsel for the parties and also perused the record.

The process server while making the note on the notice issued under sub-section(1) of Section 5 of the Act of 1964 has simply mentioned that the party concerned had refused to accept the notice. In my considered opinion on basis of such a note service cannot be treated to be effected sufficiently. Rule 17 of Order 5 Code of Civil Procedure provides a specific procedure required to be adopted by the process server, in event defendant or his agent refused to sign the acknowledgment.

According to Rule 17 Order 5 Code of Civil Procedure in such eventuality the serving officer is required to affix a copy of summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain and shall then return the original to the Court from which the summon was issued with a report endorsed thereon or annexed thereto stating that he has also affixed the copy, the circumstances under which he did so and the name and address of the person, if any, by whom the house was identified and in whose presence the copy was affixed.

In the present case no such procedure was adopted by the process server. Learned District Judge while deciding the appeal under Section 9 of the Act of 1964 failed to appreciate this position of law. In view of it the court below erred while treating the service sufficient upon the petitioner on basis of note made by the process server at the back of the notice returned to the court. It is apparent that the order was made by the Estate Officer without effecting service of the notice issued under sub-section(1) of Section 5 of the Act of 1964. In view of it the order passed by the Estate Officer also suffers from an incurable lacunae.

Accordingly the order passed by the District Judge dated 17.9.1993 (Anx.5) and the order passed by the Estate Officer affirmed by the District Judge are hereby quashed. The Estate Officer may now proceed with the proceedings under Section 5 of the Act of 1964 by giving an opportunity of hearing to the petitioner. It is open for the petitioner to raise all the objections before the Estate Officer including all the objections before the Estate Officer including all questions which have been raised by the petitioner in the present writ petition. The parties are in agreement to appear before the Estate Officer on 14.6.2005.

The writ petition is disposed of accordingly. The cost of the petitioner is made easy.

(GOVIND MATHUR),J.

kkm/ps.